

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PATIENCE TUCKER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
 COMMISSIONER OF SOCIAL
 SECURITY ADMINISTRATION

Defendant.

Case No. 2:12-cv-00766-KJD-CWH

ORDER

This matter was referred to the undersigned Magistrate Judge on Plaintiff's Application for Leave to Proceed *In Forma Pauperis* (#1), filed May 8, 2012.

I. *In Forma Pauperis* Application

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.

1 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all
 2 material allegations in the complaint are accepted as true and are to be construed in the light most
 3 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a
 4 pro se complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines v.*
 5 *Kerner*, 404 U.S. 519, 520 (1972) (per curiam).

6 Plaintiff's complaint challenges a decision by the Social Security Administration ("SSA")
 7 denying disability benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42
 8 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam)
 9 ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been party
 10 to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the claim").
 11 Generally, if the SSA denies a claimant's application for disability benefits, he can request
 12 reconsideration of the decision. If the claim is denied at the reconsideration level, a claimant may
 13 request a hearing before an Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant
 14 may request review of the decision by the Appeals Council. If the Appeals Council declines to review
 15 the ALJ's decision, a claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

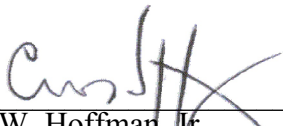
16 Once a plaintiff has exhausted administrative remedies, she can obtain judicial review of an
 17 SSA decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.*
 18 An action for judicial review of a determination by the SSA must be brought "in the district court of the
 19 United States for the judicial district in which the plaintiff resides." *Id.* A district court can affirm,
 20 modify, reverse, or remand a decision if Plaintiff has exhausted his administrative remedies and timely
 21 filed a civil action. However, judicial review of the Commissioner's decision to deny benefits is
 22 limited to determining: (a) whether there is substantial evidence in the record as a whole to support the
 23 findings of the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v.*
 24 *Commissioner of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

25 Plaintiff alleges that on March 5, 2012, the Appeals Council denied a request for review, and, at
 26 that time, the ALJ's decision became the final decision of the Commissioner. Thus, it appears Plaintiff
 27 has exhausted administrative remedies and that this suit is timely. Accordingly,

28 **IT IS ORDERED** that:

1. Plaintiff's request to proceed in forma pauperis is **GRANTED**. Plaintiff shall not be required to pay the filing fee of three hundred fifty dollars (\$350.00).
2. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the issuance of subpoenas at government expense.
3. The Clerk of Court shall file the Complaint.
4. The Clerk of the Court shall serve the Commissioner of the Social Security Administration by sending a copy of the summons and Complaint by certified mail to: (1) General Counsel, Social Security Administration, Room 611, Altmeyer Bldg., 6401 Security Blvd., Baltimore, Maryland 21235; and (2) the Attorney General of the United States, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.
5. The Clerk of Court shall issue summons to the United States Attorney for the District of Nevada and deliver the summons and Complaint to the U.S. Marshal for service.
6. From this point forward, Plaintiff shall serve upon Defendant or, if appearance has been entered by counsel, upon the attorney, a copy of every pleading, motion or other document submitted for consideration by the court. Plaintiff shall include with the original paper submitted for filing a certificate stating the date that a true and correct copy of the document was personally served or sent by mail to the defendants or counsel for the defendants. The court may disregard any paper received by a district judge or magistrate judge which has not been filed with the Clerk, and any paper received by a district judge, magistrate judge or the Clerk which fails to include a certificate of service.

Dated this 26th day of July, 2012.



C.W. Hoffman, Jr.
United States Magistrate Judge